

**POUL SHEN REARING (PTE.) LTD. v.
ANG KOK KUAN**

[D.C.A. (Chua J.) November 2, 1979]

[Singapore — District Court Appeal No. 44 of 1979]

Landlord and Tenant — Government acquisition of land — Compensation awarded to respondent — Claim by appellants to two-thirds of award — Distress levied for one year's rent against appellant — Whether there was a tenancy therefor entitling appellants to share award.

The respondent in this case was a ground tenant of the premises known as No. 76A Lorong Andong, Singapore. On July 1, 1972, the firm of Poul Shen Rearing Company was registered pursuant to a partnership agreement between the respondent and four others. The said firm was formed to promote the breeding of fish and also fish products for the Japanese market. Towards that end, the firm entered into an agreement with the respondent on July 21, 1972 whereby the respondent sublet to the firm the said piece of land with two ponds thereon for a period of fifteen years from November 1, 1971, at a monthly rent of \$60. Clause 6 of the said agreement stipulated that if the said piece of land, together with the two ponds thereon, were to be acquired by the Government "and if after such acquisition compensation is paid by the Government then such compensation shall be paid as to two-thirds thereof to the tenant (meaning Poul Shen Rearing Co.) and as to the balance one third thereof to the landlord." The firm then entered into possession and carried on business until March 31, 1973 when notice of termination of the firm was filed with the Registry of Business Names.

On February 12, 1973, the appellants were incorporated for the purpose of taking over the business of the firm. The appellants commenced trading on August 1, 1973, at the said piece of land. On September 5, 1974, the said piece of land was compulsorily acquired by the government which subsequently took possession of it on December 17, 1974.

On March 4, 1975 the respondent was granted leave to issue distress for one year's rent at \$60 per month from January 25, 1974.

The present appeal arose from a claim by the appellants for a declaration that they were entitled to \$9,461.59 being two-thirds of the ex-gratia compensation awarded by the Housing & Development Board for improvement to the said land. The learned District Judge accepted the respondent's contention that the old tenancy ceased to have effect and that no new agreement was ever signed between the parties.

Held, dismissing the appeal: (1) the learned District Judge was right in his finding that the appellants did not become tenants in place of the firm upon the terms and conditions of the agreement with the firm;

(2) although the respondent was granted leave to issue distress he was not estopped from denying that the appellants were his tenants "on the same terms and conditions" as the tenancy agreement with the firm and that the respondent's action had the effect of acknowledging the appellants at the most as monthly tenants pending the finalisation of the new agreement.

DISTRICT COURT APPEAL.*Wee Han Kim* for the appellants.*J.H.H. Wan* for the respondent.*Cur. Adv. Vult.*

Chua J.: This appeal arises from a claim by the appellants for a declaration that they are entitled to \$9,461.59 being two-thirds of the ex-gratia compensation awarded by the Housing & Development Board for improvements to the land on which stood the premises known as No. 76A Lorong Andong, Singapore (the said piece of land). By judgment dated May 22, 1979, judgment was given for the respondent and the appellants' claim was dismissed with costs.

The facts are these. The respondent was at all

material times a ground tenant of Sembawang Estate Ltd. of the said piece of land. The firm of Poul Shen Rearing Company (the firm) was registered on July 1, 1972, pursuant to a partnership agreement dated March 5, 1972. The partners were Ang Kok Kuan the respondent, Oh Boi Kin, Chew Jui Hsuen, Nakamura Takashi and Tay Hwee Guat. The firm was formed for the main purpose of "promoting the breeding of fish and also fish products" for the Japanese market. Towards that end, the firm entered into an agreement with the respondent on July 21, 1972, whereby the respondent sublet to the firm the said piece of land with two ponds thereon for a period of fifteen years from November 1, 1971, at a monthly rent of \$60. Clause 6 of this agreement stipulates that if the said piece of land, together with the two ponds thereon, were to be acquired by the Government "and if after such acquisition compensation is paid by the Government then such compensation shall be paid as to two-thirds (2/3) thereof to the tenant (meaning Poul Shen Rearing Co.) and as to the balance one-third (1/3) thereof to the landlord". The firm then entered into possession and carried on business until March 31, 1973, when notice of termination of the firm was filed with the Registry of Business Names.

On February 12, 1973, the appellants were incorporated for the purpose of taking over the business of the firm. The appellants commenced trading on August 1, 1973, at the said piece of land. On September 5, 1974, the said piece of land was compulsorily acquired by the Government which subsequently took possession of it on December 17, 1974.

On March 4, 1975, the respondent was granted leave to issue distress for one year's rent at \$60 per month from January 25, 1974.

Mr. Wee Han Kim, for the appellants, submits that the law of landlord and tenant leans in favour of an agreement and that as the appellants had entered on the premises and the respondent had levied distress for rent the appellants must be deemed to hold the said piece of land on a monthly tenancy on the same terms and conditions as the tenancy agreement with the firm including clause 6. He further submits that as the respondent had levied distress on the appellants on the terms of the tenancy agreement with the firm that necessarily implies that the appellants held the said piece of land as tenants of the respondent upon the terms of the said agreement except in so far as any of the terms are inconsistent with a monthly tenancy and the term to share compensation is not inconsistent with a monthly tenancy.

Before the learned District Judge the appellants alleged that the respondent accepted them as tenants in place of the firm. The respondent, on the other hand, asserted that as far as he was concerned the old tenancy ceased to have effect and that he was prepared to enter into a new agreement with the appellants but as the terms could not be agreed upon, no new agreement was ever signed between them.

On the evidence before him the learned District Judge was right in his finding that the appellants did not become tenants in place of the firm upon the terms and conditions of the agreement with the firm.

I agree with the view of the learned District Judge that although the respondent was granted leave to issue distress he is not estopped from denying that the appellants were his tenants "on the same terms and conditions" as the tenancy agreement with the firm and that the respondent's action had the effect of acknowledging the appellants at the most as monthly tenants pending the finalisation of the new agreement.

The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Wee Eng Lock & Son; Wan & Choo.*

KIAN HUAT LORRY TRANSPORT v. KAMARDIN BIN ADAN & ANOR.

[D.C.A. (Rajah J.) November 24, 1979]

[Singapore — District Court Appeal No. 22 of 1979]

Torts — Negligence — Injury in the course of employment — Employer's duty to provide safe system of work.

Employment — Injury in the course of — Employer's duty to provide safe system of work.

The plaintiff in this case claimed for damages for personal injuries sustained during the course of his employment by the first defendants, as a labourer at Telok Ayer Basin. The plaintiff claimed that there was negligence on the part of the first defendant as his employers to take reasonable care for the safety of the plaintiff and also negligence on the part of the second defendants, their servants or agents in the use, management and driving of the motor crane. The facts revealed that at the material time, the plaintiff was engaged in unloading bales of rubber from a lorry into a lighter by means of a mobile crane owned by the second defendants. The method of operation was that a net was spread on the ground and bales of rubber, about ten at a time were pushed on to the net. The net was then hooked to the hook of the mobile crane. The driver of the crane of the second defendants would then, on a signal from the crane attendant also of the second defendants, cause the crane to raise the net and swing it to the lighter anchored alongside the wharf at Telok Ayer Basin. The plaintiff submitted that he was working on the ground when the net containing the rubber bales above him burst, and the rubber bales fell down. He ran away but one of the bales bounced and hit his leg.

At the trial the parties agreed general and special damages at \$6,000 leaving the question of liability to be tried. The learned trial judge absolved the plaintiff of any negligence and entered judgment for the plaintiff against the first defendant. He dismissed the claim against the second defendants. The first defendants appealed.

Held: (1) it was the responsibility of the crane driver and his attendant to provide and to ensure a safe crane operation, including all paraphernalia that was part and parcel of such safe operation; it was the second defendants' responsibility to see to it that the net, which was part of the lifting by crane of the bales of rubber, was in a condition fit for the purpose for which it was intended;

(2) as the second defendants were also negligent and therefore liable to the plaintiff, liability should be apportioned between the two defendants on an equal basis.

DISTRICT COURT APPEAL.

Shrinivas Rai for the appellants (first defendant).

M.A. Valibhoy for the first respondent (the plaintiff).

Yap Tyou Min for the second respondent (second defendant).

Rajah J.: The plaintiff's claim was for damages for personal injuries and consequential loss suffered

A by him and caused during the course of his employment by the 1st defendants as a labourer at Telok Ayer Basin on or about the 8th day of May 1972 by the negligence of the 1st defendants, their servants or agents and/or by breach by the 1st defendants of their duty to the plaintiff as employers of the plaintiff to take reasonable care for the safety of the plaintiff as their servant and/or by the negligence of the 2nd defendants, their servants or agents in the use management and driving of a motor crane and for costs.

In his statement of claim the plaintiff alleged that he was employed by the 1st defendants as a labourer and went on to say as follows: —

"2. It was part of the duty of the plaintiff to accompany the 1st defendants' lorries and to unload bales of rubber from the lorries on to lighters by means of a mobile crane (SGA. 8241) owned by the second defendants and operated by them their servants or agents. On the day of the accident the bales of rubber were unloaded at Telok Ayer Basin.

3. The system for unloading the rubber bales from the lorries and then load them to the lighters was as follows. A net was first spread on the ground and the bales of rubber were pushed from the lorry. About 10 bales were put in the net and thereafter the net was hooked onto the hook of the mobile crane. The driver of the crane, a servant or agent of the second defendants would then on a signal from the crane attendant also a servant or agent of the second defendants cause the crane to raise the net and swing it onto a lighter which was anchored alongside the wharf.

4. The system of lifting and swinging the bales of rubber was as both the defendants knew or ought to have known unsafe in that if the net broke the bales of rubber would fall and injure the people below. A safe system would have ensured that nobody was below the raised net.

5. On or about the 8th day of May 1972 the plaintiff in the course of his duty as aforesaid was spreading a net on the ground when another net with bales of rubber in it and which was hooked on the mobile crane burst above his head causing the bales to fall thereby injuring the plaintiff."

F The 1st defendants by their defence denied that the accident was caused by their negligence or that of their servants or agents and said that the accident was caused solely or contributed to by the negligence and/or breach of duty of the 2nd defendants their servants or agents and/or the negligence of the plaintiff.

G The 2nd defendants by their defence denied that the accident was caused by their negligence or that of their servants or agents and said that their servants or agents could not be responsible for the bursting of the net as the said net was provided by the hirers of their motor crane and that there was no way for them their servants or agents to know the strength of the net on a visual examination thereof. Further and in the alternative they said that the accident was solely caused or contributed to by the negligence and/or breach of duty of the 1st defendants their servants and/or the negligence of the plaintiff.

I At the trial the parties agreed general and special damages at \$6,000, leaving the question of liability to be tried. At the conclusion of the trial the learned trial judge absolved the plaintiff of any negligence and entered judgment for the plaintiff against the 1st defendant in the sum of \$6,000 and costs. He dismissed the claim against the 2nd defendants and ordered that the 1st defendants pay the costs of the 2nd defendants.

There was hardly any dispute on the facts and on the method of operating the mobile crane for the